

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

M. HU,	§	
	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	Civil Action No. 3:22-cv-2432-x
	§	
ASK AMERICA, LLC,	§	
	§	
<i>Defendant.</i>	§	
	§	

**MEMORANDUM OPINION AND ORDER**

The defendant, Ask America, LLC (“Ask America”), filed a *Motion to Dismiss*. [Doc. 5]. Having reviewed the briefing and the law, the Court **DENIES** the motion.

This declaratory action boils down to contract interpretation. Declaratory judgments gets resolved at summary judgment. So does contract interpretation. At the motion-to-dismiss stage, the Court simply evaluates whether a complaint contains sufficient factual matter to state a claim to relief that is plausible on its face.<sup>1</sup> The parties’ briefing makes clear that that Mei Mei Hu and Ask America disagree on the correct interpretation of the contract. Here, the Court finds, because of the existence of the contract and the alleged discrepancies within it,<sup>2</sup> the complaint contains sufficient factual matter to state a claim to relief that is plausible. Whose interpretation should prevail? We’ll find out on cross motions for summary judgment.

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<sup>1</sup> *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

<sup>2</sup> For example, Hu contends a condition precedent in the contract was not met while Ask America contends no such condition precedent existed. [Doc. 11 at 7]. This creates a dispute that can be evaluated only by looking to the contract itself.

Additionally, Ask America argues for dismissal on the ground that Hu's action is an impermissible anticipatory lawsuit.<sup>3</sup> That's what declaratory judgment actions are. Nonetheless, here, the Court finds an actual controversy that is sufficiently ripe. And true, Ask America could have filed its own suit. But it didn't do so before or after Hu filed suit. And even if Ask America filed after Hu, the first-to-file rule would obligate this Court to proceed with this first-filed suit. Hu has a ripe, plausible lawsuit, so the Court **DENIES** Ask America's motion to dismiss.

**IT IS SO ORDERED** this 14th day of July, 2023.

A handwritten signature in black ink, appearing to read "Brantley Starr", is written over a horizontal line.

BRANTLEY STARR  
UNITED STATES DISTRICT JUDGE

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<sup>3</sup> See Doc. 5 at 15–19.